

July 9 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

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FILED

JUL 09 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

9 ROBERT HILTEN,

10 and

11 LYNN HILTEN

12 Plaintiffs,

13 v.

14 ROY BRAGG,

15 Defendants.

Supreme Court Case No. DA 09-0340

District Court Cause No. DV 06-0983

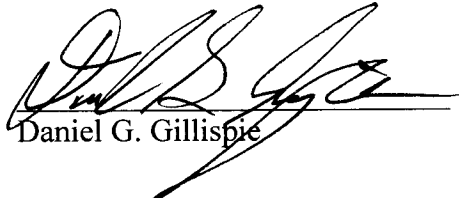
MOTION TO STAY NOTICE OF APPEAL

16 Plaintiffs Robert Hilten and Lynn Hilten, through their attorneys Billings Legal, PLLC,
17 hereby move for to stay their Notice of Appeal until such time as a final judgment is entered in
18 this matter. Plaintiffs' basis for this motion is as follows:

- 19 1. Defendant's Motion for Summary Judgment was granted by presiding District Judge
20 Gregory R. Todd on May 8, 2009.
- 21 2. The May 8, 2009 Order dismissed Plaintiff's complaint in its entirety.
- 22 3. Plaintiffs intend to seek Supreme Court review of certain limited aspects of the May
23 8, 2009 order.
- 24 4. Defendant filed a Motion for Sanctions on May 15, 2009 and supporting brief on May
25 29, 2009.

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5. Plaintiff answered Defendant's motion pursuant to Rule 2 of the Montana Uniform District Court Rules on before June 19, 2009.
 6. Out of an abundance of caution a Notice of Appeal was filed with this Court on June 5, 2009, within 30 days of the Order which Plaintiff seeks to appeal.
 7. In discussions with Defense counsel Tom Singer it has been determined that the May 8, 2009 order was not a "Final judgment" from which appeal could be taken pursuant to Rule 4 of the Rules of Appellate Procedure since it did not conclusively determine the rights of the parties.
 8. Specifically, this Court's ruling on Defendant's sanctions motion constitutes a "necessary determination of the amount of costs and attorney fees awarded or sanction imposed" under Rule 4(1)(a).
 9. In spite of Plaintiffs' Notice of Appeal, this Court still retains jurisdiction of this matter, including Defendant's Motion for Sanctions, pursuant to Rule 4(5)(a)(ii), which provides "The district court is not deprived of jurisdiction to enter the written judgment or order by the premature filing of a notice of appeal."
 10. The Rules of Appellate Procedure further provide that since Plaintiffs' Notice of Appeal was premature, it shall be treated as if it were filed on the day that judgment is eventually entered.
 11. Plaintiffs ask this Court to hold their notice of appeal in abeyance until such time as a final judgment, including determination of attorneys fees and costs, is entered in this matter.
 12. Defense counsel Tom Singer was advised of this motion and does not oppose it.

DATED this 8th day of July, 2009.


Daniel G. Gillispie

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3 **CERTIFICATE OF SERVICE**

4 The undersigned certifies that on the 8 day of July, 2009 a true and correct copy of
5 the enclosed and foregoing was mailed, via first class mail, postage prepaid to:

6
7 T. Thomas Singer
8 Axilon Law Group PLLC
9 115 N. Broadway Ste. 310
PO Box 987
Billings, Montana 59103-0987

10 And courtesy copies to:

11 Sandy Fox
12 PO Box 367
13 Columbus, MT 59019-0367
Clerk of District Court – Stillwater County

14 Honorable Gregory R. Todd
15 PO Box 35026
16 Billings, MT 59107
District Court Judge

17 Dated this 8 day of July, 2009.
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19 
20 **BILLINGS LEGAL, PLLC**